IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

D.I.G., B.S.F. & Anr. vs. Pushkar Giri
(D.B.CIVIL SPECIAL APPEAL(WRIT) NO.507/1997)

DATE OF JUDGMENT : 15th NOVEMBER, 2007

P R E S E N T

HON'BLE THE ACTG. CHIEF JUSTICE MR.RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr.Kuldeep Mathur, for the appellants
Mr.R.K.Singhal, for the respondent

BY THE COURT:(PER HON'BLE MR. BHANWAROO KHAN J.)

The appellants have preferred this appeal against the judgment dated February 21, 1997 passed by the learned Single Judge in S.B.Civil Writ Petition No.4624/1991, wherein the prayer of the present respondent was accepted and the order of termination dated August 29, 1991 (Annex.8) has been quashed with direction to give all consequential benefits in regard to service as well as emoluments.

Sans details, the facts are that the respondent (writ petitioner) was appointed and confirmed on 1.8.1985 and 1.4.1988 respectively as Cook in the B.S.F. Residential School, Sri Ganganagar. While serving in the said Institution, the then Principal of the school became annoyed and made false

complaints against him to the D.I.G. appellant No.1 herein, who happens to be the Chairman of this B.S.F.Secondary School. A show cause notice for his alleged misconduct in the discharge of duties was issued through the Principal the appellant No.2 herein on 23.5.1991 and he was asked to show cause as to why his services may not be terminated. The respondent made request to inspect records and also to provide a defence nominee to plead his case as he is an illiterate person. This reply of the respondent was not treated as sufficient one and he was asked to submit further clarification to which the respondent again requested to supply him the relevant material so as to enable him to file reply of the show cause notice issued to him. The Principal- appellant No.2 made him known that he had been appointed as the sole enquiry officer against the allegations alleged against the respondent. Thereupon, he submitted an application that because of animosity and prejudice of the Principal towards him, any other except the Principal be nominated the enquiry officer, but without any result. The enquiry officer on 24.8.1991 recorded the statements of the witnesses and it was conveyed to the respondent that since he has not produced his defence, he can do so on 26.8.91. But without giving any opportunity of defence on 29.8.91 the services of the respondents were terminated. Hence he filed a writ petition, which was accepted.

The appellants while admitting issuance of the show cause notice to the respondent averred that the Chairman of the School appointed the Principal as an enquiry officer and further that there were several complaints against the respondent for which he was warned many a times to improve his conduct but without any result. The services of the respondent because of the alleged misconduct having been proved in the enquiry conducted by the enquiry officer as per rules were terminated.

The learned Single Judge after hearing both the parties concluded that the enquiry against the respondent was concluded without following the due rules applicable and also the principles of natural justice. The respondent was not provided opportunity of hearing, cross examination of the witnesses and non-supply of the documents inspite of the demands by the respondent. The enquiry conducted by the appellant too was with prejudiced mind. Hence the termination order issued in pursuance of the enquiry conducted was quashed and the respondent was given all consequential benefits.

Heard learned counsel for the parties and the material produced was gone through.

The learned counsel for the appellants pleaded that

the D.I.G., B.S.F. In the capacity of the Chairman of the School appointed the Principal of the said School as enquiry officer to conduct enquiry against the respondent about the misconduct indiscipline and negligence in performance of the duties. The charges were served on the respondent delinquent and after recording the statement of the witnesses the enquiry officer submitted the report to the disciplinary authority. The proper opportunity to defend himself was given to the respondent and no illegality or irregularity in procedure of the enquiry was committed by the enquiry officer. The respondent was rightly terminated. The Principal being the head of the office of the respondent was well aware of the working of the respondent and simply on the basis of prejudice if he complained to the Chairman would not vitiate the enquiry. Moreso, there is no evidence to substantiate that the enquiry officer was either annoyed with the respondent or having biased or prejudiced mind against the respondent. The allegation of biasedness towards him of the enquiry officer is completely baseless. No illegality or irregularity has been committed while concluding the enquiry against the respondent.

The learned counsel for the respondent pleaded that simply a show cause notice was issued to him, no charge-sheet or statement of allegations was ever provided to the delinquent

respondent inspite of many written requests. When the respondent came to know about appointment of Principal as enquiry officer, he immediately approached to the higher authorities about prejudiced mind of the enquiry officer towards him. Furthermore, in a single day the statements of the witnesses though recorded in his presence but no opportunity of any cross examination was given to him. There is a set procedure for imposing penalties under the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (for short the Rules) which was not followed in spirit. Hence the enquiry conducted by the enquiry officer is absolutely illegal and the order passed on the said facts is also without any force and is void.

The respondent, being a cook in B.S.F., is a civil government servant can be dealt with under CCA Rules and Rules 3 of the said Rules specifically provides that civil government servant in the defence services are governed by these rules and if there is any departmental enquiry is to be conducted then the procedure prescribed under these rules are required to be followed mandatorily. Under these rules the procedure for imposing minor penalties is prescribed under Rule 16 and for imposing major penalties procedure prescribed is under Rule 14. As per Rule 14 wherever the disciplinary authority comes to conclusion that there are grounds for

inquiring against any imputation of misconduct or misbehaviour then he either inquire into himself or appoint an enquiry officer. On receipt of the enquiry officer's report the disciplinary authority shall issue copy of the articles of charges, statement of imputation of misconduct and list of documents and list of documents and witnesses. After the receipt of written statement of defence, the disciplinary authority may himself inquiry into or can appoint the enquiry officer. When it is sent to the enquiry officer by the disciplinary authority then the delinquent may move for any other government servant to be provided as defence nominee to plead the case of the delinquent. The enquiry officer on demand will submit the documents relied on, the statement of allegations and then the statements of the witnesses are recorded, the opportunity of cross examination of the witnesses to the delinquent along with the right to lead his defence is to be given. After hearing the delinquent, the enquiry officer will submit the report to the disciplinary authority, who will pass the appropriate order on the basis of the report so submitted.

A bare perusal of the documents produced clearly reveals that no such procedure as prescribed under the rules was followed by the enquiry officer. It was completed on a single day. The delinquent respondent was neither given the copies of documents relied on by the department nor was provided any

opportunity to defend himself inspite of requests made by the delinquent respondent. No defence nominee was appointed to defend the respondent. At the very outset when he came to know about appointment of the enquiry officer, he requested that because of the prejudice mind of the enquiry officer against him another enquiry officer may be appointed. But this request was also not adhered to. If the rules prescribes any due procedure then it is mandatory for the enquiry officer to have followed the same. Nothing sort of such steps or the rules were ever followed by the enquiry officer. The statements recorded in presence of the delinquent officer reveals that it was simply read over to him. No cross examination was ever allowed and no list of witnesses was ever given to him. After completion of the enquiry he was given two days time to produce defence and when he failed to do so, after three days dismissal order was served on him.

It is clearly borne out that neither the rules while deciding the enquiry against the respondent were followed or observed nor any opportunity to defend himself was given to him. Furthermore, neither any document or list of witnesses was provided to the delinquent. No opportunity for cross examination was allowed to him. The enquiry against the respondent is in flagrant violation of the rules prescribed and even the principles of natural justice were not followed. The learned Judge has

elaborately discussed the matter and has come to the conclusion that the enquiry officer was both a complainant and a prosecutor having a predetermined mind to punish the respondent, which is also borne out from the record. There is no illegality or infirmity in the judgment delivered by the learned Single Judge. This Court is not inclined to interfere in the judgment passed by the learned Single Judge. The appeal deserves to be dismissed.

Consequently, the appeal failed and is hereby dismissed with no order as to costs.

(BHANWAROO KHAN) J. **(RAJESH BALIA) ACTG.C.J.**

BKS/-